55TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1221.

ESTATE OF GEORGE W. LAWRENCE.

APRIL 28, 1898.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. MAHON, from the Committee on War Claims, submitted the following

REPORT.

[To accompany S. 2324.]

The Committee on War Claims, to whom was referred the bill (S. 2324) for the relief of the estate of George W. Lawrence, submit the following report:

The report of Mr. Warren, made to the Senate first session Fifty-fifth Congress, is so full and conclusive that your committee have adopted it as a fair statement of the grounds for relief.

Your committee recommend the passage of the bill.

[Senate Report No. 372, Fifty-fifth Congress, first session.]

The Committee on Claims, to whom was referred the bill (S. 2324) for the relief of the estate of George W. Lawrence, have had the same under consideration, and respectfully report:

Your committee adopt the following report of the House Committee on War Claims (No. 1346, Fifty-first Congress, first session) as a part of this report, and recommend the passage of the bill:

[House Report No. 1346, Fifty-first Congress, first session.]

The Committee on War Claims, to whom was referred the bill (H. R. 1566) for the relief of the administratrix of the estate of George W. Lawrence, report as follows:

The facts out of which this bill for relief arises will be found stated in House report from the Committee on War Claims of the present Congress, No. 452, a copy of which is hereto appended for information. Your committee adopt the said report as their own, and report back the bill and recommend its passage.

Your committee find that this bill has been favorably reported by seven Committees on War Claims on the part of the House and three of a like committee on the part of the Senate within the past twenty years; that the bill has passed the House three times, passed the Senate three times; and we adopt, in the main, the report made by the Senate and House Committees on War Claims in the Forty-ninth and Fiftieth Congresses, and Senate committee of the Fiftieth Congress, which is as follows:

"In the winter and spring of 1863 the Navy Department prepared plans and drawings for several light-draught steam ironclad monitors, with specifications showing the dimensions, kind, and thickness of the plating, and submitted the same to various contractors for proposals for construction.

"The time required in the construction was a material element in the contract, and none were made for a period longer than eight months. Some of the contracts were limited to six months. So material was the matter of time considered that in the contracts made for six months the contractors were to receive $395,000, while those whose contracts extended to eight months for completion were only to receive $386,000, or at the rate of $4,500 per month less; but there was a provision in all contracts then made that if the vessels were completed in less time than provided in the contract the contractor was to receive an additional pay of $4,500 per month, and if the completion was delayed beyond the period named the Government was to deduct from the contract price at the same rate—that is, $4,500 per month. McKay & Aldus were contractors for the building of the light-draught monitor *Squando*, to be completed in six months, the Department first satisfying itself of their facilities for doing the work in that time.

"Donald McKay was contractor, and built the light-draught monitor *Nausett*, also

the iron double-ender *Ashuelot*. The *Squando* and *Nausett* were identical in the original plans, and in the changes and alterations thereon, with the *Etlah* and *Shiloh*, built in St. Louis.

"Having accepted the undertaking to build these vessels, the several parties named made their arrangements accordingly, having the yards, machinery, etc., necessary therefor, and entered into contracts for the necessary materials, based upon the contracts with the Government, and commenced the work on the several vessels named. About this time, Chief Engineer of the Navy Stimers having returned from Charleston, where he had been sent to make observations as to the conduct of Ericsson's monitors in battle, a consultation was had at the Navy Department, in which (quoting from Stimer's evidence)—

"'The matter was discussed as to whether we had better build our vessels in strict accordance with the letter of the contracts which we were giving out, without any change whatever, or had better take advantage of every such fight and make improvements as we went along, although we fully appreciated that it would delay their completion and add to their cost. Assistant Secretary Fox made the remark that he thought following this course would probably entail an extra cost of a million of dollars for each battle where the monitors were engaged.

"'Well, it was decided that that course should be followed. The contracts for the light-draught monitors, of which the *Etlah* was one, had already been drawn, specifications, general drawings, etc., of the original plans, but we went immediately to work to make changes on them in accordance with what I have already explained as the policy to be pursued. You will understand, therefore, why it was that I should send constant instruction to Mr. McCord directing him to make his vessel different from what he had contracted to do; why I sent him drawings that differed from those specified in the contract. You will find, too, that these might be very material, as they certainly were. The acts, therefore, which I performed, which affected Mr. McCord and affect this case, were to direct him to make a different vessel from the one he contracted to do.'

"Acting upon this theory, the Department commenced forwarding to the contractors orders for changes and drawings before even the keel was laid, and those changes which in the aggregate affected all parts of the vessel, making in the end almost entirely different vessels, were continued, and the drawings furnished therefor for nearly a year and a half after the time specified in the contract for their completion had elapsed, and from the 23d of June, 1864, for about the period of three months, work was suspended altogether upon these vessels, by the orders of the Navy Department, which had then in contemplation some general changes in their construction which required time to perfect. All of this time, however, the contractors were under heavy expenses for the maintenance of the yards and men, whom they dared not discharge for fear of inability to supply their places, and not knowing on what day their services would be required.

"In addition to all this, the prices of labor and materials required for the work, and for which the contractors had made provision during the time of the contracts, rapidly advanced, so that, as found by the Committee on War Claims of the first session of the Forty-third Congress, iron that at the date of the contracts was worth $65 per ton advanced during the prolonged time to $220 per ton, and labor from $2.50 per day to $4 per day.

"This committee have not, however, considered it necessary to investigate the details as to amounts or percentage of such increase of prices, but are convinced that the cost of the work was greatly enhanced by reason of the delay caused by the course adopted by the Government in these changes and alterations from the original plans.

"Chief Engineer Stimers, in his evidence in McCord's case, states the case as understood by him and presumably by the Department, which had no authority to adjust claims for damages, as follows:

"'Before expressing an opinion on the matter as an expert, I must explain that the principles upon which the contractors of this and the contractors of similar vessels were to be paid were settled upon before I left the office, and I have always understood that these principles were adhered to, and they were as follows: That we should pay for the contract work by making the contract payments, or the payments provided for in the contract; that we should pay for alterations and changes a proper sum as might be agreed upon between the Government and the contractors at current rates. Now, that being the case, I consider that the Government is still indebted to the contractors of the *Etlah*, because, although the original contract work has been paid for as originally agreed upon, and the extra work may have been paid for *per se*, the fact of calling upon the contractor to make the changes on his vessel, and his compliance with those demands, delayed him in the execution of the original contract work. This delay compelled him to pay the increased rates for labor and material which obtained at the time when the work was actually performed; and although the contractor took the risk of a rise in prices when he signed his contract, it was only for a risk during the period of his contract, or the period he would have required to perform the work if the Government had not delayed him by their direct

interference; now, whatever increase there was in the cost of the original work contemplated by the contract, due to the delay caused by the Government, that increase is now due, as there has been no pretense on the part of the officers of the Government to have paid it. If you will determine the increased cost of material and labor of the original contract work during the extent of time when the contract was delayed by an interference of the Government to execure it, you will have, in my judgment, the indebtedness of the Government. There may be very large claims on account of extra work of which I know nothing.'

"There seems to be no question that but for the interference of the Government these vessels would have been completed within the time specified in the contract; that these contractors had the means and the ability to do so, and that the heavy losses sustained by reason of the interference of the Government could not have been prevented by any reasonable prudence or foresight on their part, as the labor could not be anticipated, nor could they possibly know, from the frequent changes being made, the kind, quantity, or, in the case of the iron plating, the thickness or size of the plates to be used. The question of the duty of the Government to relieve the contractors for the building of these vessels has been repeatedly recognized by Congress. (Slone, Report No. 17, Thirty-ninth Congress, second session; Senator Nye, Report No. 45, Thirty-ninth Congress, first session; Senator Drake, Report No. 163, Forty-first Congress, second session; Senator Nye, Report No. 37, Forty-second Congress, second session; A. B. Smith, Report No. 36, Forty-second Congress, third session; Senator Cragin, Report No. 124, Forty-third Congress, first session; Senator Hoar, Report No. 14, Forty-seventh Congress, first session.)

"Congresses reported favorably on those bills, recommending the claimants such relief as they desired. Several of them have passed both Houses of Congress.

"In 1865 a board was appointed under a resolution of the Senate, called the Selfridge board, which examined and reported upon numerous vessels. Their awards were not paid, but their discussion led to the passage of the act of March 2, 1867, directing the Secretary of the Navy to investigate the claims of all contractors for building vessels of iron, etc., and to ascertain the additional cost incurred by them by reason of any changes and alterations there, with the proviso:

"'But no allowance for any advance in the price of labor or material shall be considered, unless such advance occurred during the prolonged time for completing the work made necessary by the delay resulting from the action of the Government aforesaid, and then only when such advance could not have been avoided by the exercise of ordinary prudence and diligence on the part of the contractor.' (14 Stat., 424.)

"The Secretary of the Navy delegated the matter thus submitted to a board, of which J. B. Marchand was chairman, and called the Marchand board. This board, perhaps for economic reasons, decided to confine their examination to the question of extra work, holding that the question of increased cost by reason of the delays caused by Government was one sounding in damages, and therefore beyond the jurisdiction of the Department, and not included within the act.

"Claims were filed by these contractors, but reported as 'not considered within the province of the board' (report contained in vol. 10, Congressional Record, p. 1504), nor were the claimants permitted to appear before the board on behalf of their claims.

"In the Forty-first Congress, second session, a joint resolution was passed by Congress referring these cases to the Court of Claims, but failed to receive the sanction of the President on the ground that the bill as passed omitted the proviso contained in the act of March 2, 1867, and above quoted, since which time various reports have been made, and favorable action had by one branch of Congress or the other, but no general bill for the relief of these and other contractors has become a law.

"A majority of the contractors for the building of this class of vessels have, from time to time, received relief through Congress, but these claimants have thus far received no relief. Among those who have been relieved are George C. Bestor, contractor of the *Shiloh*, by act of Congress (17 Stat., 733, 1873) appropriating $125,000; Miles Greenwood (17 Stat., 764); S. S. Marchen, jr. (18 Stat., 635); Donohue, Ryan & Co. (15 Stat., 353); C. W. Whitney (17 Stat., 071). Under act of 25th June, 1864 (13 Stat., 409), Ericsson was allowed $1,070,438.93 for such increased cost.

"These contractors also claim that they have not received full pay for the extras furnished by them in the construction of the said vessels, aside from the main question of increased cost by reason of the delays. The facts concerning this branch of the case are as follows:

"The frequent changes and alterations ordered by the Department on these vessels, and which, under the contracts, the Government had a right to demand by paying the extra expense caused thereby, occasioned a large amount of extra work, some of which was specifically agreed upon, and part of which was done under the orders of the Department without any agreed price. This extra work was recognized as being within the jurisdiction of the Department to pay, and the Department did pay a large portion of said extras, but did not pay all that the parties were entitled to receive. The accounts were made up in the Department without consultation with the claimants, and payments made from time to time until the last and

final payment, when a voucher containing the words, 'For work done which is extra to the contract, being the full and final payment on all extras, and in full for all claims and demands for that work,' was presented, and which was required to be and was receipted by the claimant upon receiving the amounts specified in the vouchers.

"This committee are satisfied, from the evidence before it, that the account for such extra work was not correctly adjusted; and inasmuch as the said receipts are prima facie evidence not only of payment in full for such extras per se, but may be construed to cover the question of the extra expense caused by the delays as well, therefore deem it just to all parties that the entire matter should be considered by a legal tribunal, with competent jurisdiction to hear and determine the question involved, and in considering such receipt to treat the same as prima facie evidence, but susceptible of explanation by proofs, if any they have, showing the real indebtedness of the Government to them for such increased cost of such vessels beyond the contract price, and beyond the accounts paid by reason of such changes and alterations as evidently contemplated in the previous acts of Congress providing for an adjustment thereof, upon the principle that when the Government has by its acts caused its citizens performing labor for it to incur additional expense in its performance, such additional cost should be borne by the Government."

In addition to that report your committee would further observe:

The claimants have been assiduous for twenty-three years in their efforts to obtain redress for their alleged grievances. This great lapse of time has been due not to any want of energy on their part, nor to any rejection by either House of Congress, but solely to the delay incident to the procurement of private legislation. They have never had a hearing, in the ordinary sense of the word, before any tribunal, and the present bill for their relief is to permit them to appear before the judicial branch of the Government, where their witnesses may be cross-examined by the attorneys for the United States, the credibility of their witnesses tested, and the evidence relied upon by the defense be subjected to similar tests. There they will have an opportunity to explain their failure or refusal to appear before the Selfridge board, and your committee think the Court of Claims can be relied upon to give due weight to this failure or refusal; and if it should appear that the board convened too soon after the Department expressed its satisfaction with the vessels (which was a sine qua non to consideration of the claims), to permit proper preparation of the claims the failure to appear before the board may disappear from the case.

The Marchand board, which sat in 1867, was directed by the Secretary of the Navy to inquire into and report facts, and an examination of the act of March, 1867, shows a clear intention not to submit the claims to him in such a way as to make his conclusions binding either upon the Government or the claimants.

No one has ever attempted to recover in the Court of Claims on the conclusions of the board, and it has never been pretended on either side that its decisions had the force either of judgments or awards. Congress has not considered itself under moral obligations to pay the sums found due, nor has it refrained from paying claims rejected by it.

The nature of its work may really be determined when we find by its report that during a session of four months and twenty days it passed upon the separate accounts of 40 contractors, embracing 55 different vessels, the construction of most of which had extended over the whole period during which the rise of prices changed from day to day, and very naturally the contractors have always been dissatisfied with results reached by such a forum and in so hasty a manner.

The facts which Congress desired to obtain the board did not report. The act required it (14 Stat., 424) "to report to Congress a tabular statement of each case which shall contain * * * the whole increased cost of the work over the contract price."

The board did not enter upon so elaborate and extended an inquiry, but substituted in its tabular report a column (No. 4) entitled, "Whole increased cost of the work over and above the contract price as claimed by the contractors."

The next statement required by the act was: "And the amount of such increased cost caused by the delay and action of the Government aforesaid." Not having ascertained the whole increased cost of the work over the contract price it was of course unable to state "the amount of *such* increased cost caused by the delay and action of the Government as aforesaid," and it substituted therefor a column (No. 5) entitled: "Amount of such increased cost caused by the delay and action of the Government as determined by the board *to be due.*"

These two requirements of the statute were neglected by the board and other findings substituted.

The act of March 2, 1867 (14 Stat. L., 424), required the Secretary of the Navy to ascertain "the additional cost which was necessarily incurred by each contractor in the completion of his work by reason of any changes or alterations in the plans and

specifications required, and delays in the prosecution of the work occasioned by the Government which were not provided for in the original contract."

The contract for the *Wassuc* contained the same provisions for alterations and additions as those considered by the Supreme Court of the United States in the case of Choteau *v.* The United States (95 U. S., 61), and the Marchand board might well find that nothing was due the claimants under the submission of the statute, for the changes and alterations complained of were undoubtedly provided for by the original contract. The inquiry which this bill proposes differs from the examination of the Marchand board in that respect; it recognizes that the alterations were provided for, and that claimants, like Choteau, could not recover for the enhanced cost resulting from such alterations. The issue which the bill proposes to submit has never been examined by any tribunal. The Supreme Court in the Choteau Case did not and could not pass upon any equities in the case. Equitable jurisdiction was not conferred upon the Court of Claims until March 3, 1887 (sec. 1, 24 Stat. L., 505). Your committee appends hereto a letter from Chief Engineer B. F. Isherwood, of January 26, 1887, which explains fully the causes of the increased cost to the claimants.

In addition to the safeguards as they now exist in the Court of Claims for the prevention of fraud against the United States, and the detection of misstatements or mistakes, other precautions have been adopted in the bill itself which seem to your committee sufficient to prevent any wrong or injustice being done to the United States.

Your committee are unanimously of the opinion that the claimants should not be concluded by the voucher and final receipt in question unless it should appear in equity that they should be, and that the claimants should have their rights adjudicated upon the merits of their claim.

Wherefore your committee report the bill favorably and recommend that it do pass.

WASHINGTON, D. C., *January 26, 1887.*

DEAR SIR: I have the pleasure of acknowledging the receipt of your communication of the 22d instant, asking me to inform you of the causes of the alterations and changes in the plans of the light-draught monitors constructed during the war for the Navy Department, and the causes of the delays in their construction, and whether these delays caused extra expense to the contractors?

In reply I would refer to the report on this subject made by the Hon. B. F. Wade, chairman of the Committee on the Conduct of the War, United States Senate, volume 3. From this report you will find that although I was, as you state in your note above referred to, the chief of the Bureau of Steam Engineering in the Navy Department during the war, I had nothing to do whatever with either the designing or the execution of the work for these monitors.

The Navy Department had established what was in effect a bureau for this purpose in New York City, and had placed Mr. Alfan C. Stimers at its head, with a large corps of assistant engineers, draughtsmen, etc. The whole work, hulls and machinery, was entirely in his hands. He was absolutely untrammeled, being allowed carte blanche by the Department, and his acts and plans were never submitted to any other person.

The selection of Mr. Stimers by the Navy Department for this duty was most unfortunate. The selection was wholly the act of Mr. G. V. Fox, then the Assistant Secretary of the Navy, who had unbounded but misplaced confidence in Mr. Stimer's abilities. In making the appointment Mr. Fox did not consult either of the mechanical bureaus of the Navy Department, nor was Mr. Stimers's plans ever submitted to them. The result, as is well known, was a most disastrous failure due to the absolute and astonishing incapacity of Mr. Stimers, and to the fact of his selection by Mr. Fox without inquiry of the mechanical bureaus as to Mr. Stimers's qualifications. In a professional matter of which Mr. Fox had no knowledge, such a selection without careful investigation of Mr. Stimers's abilities, was an act of temerity which in a measure made the Navy Department a party to the cause of failure.

At the commencement, then, Mr. Fox was responsible for a most injudicious selection for a most important position, and Mr. Stimers was responsible for the absurd blunders he committed, and as both represented the Government, the latter was to that extent justly responsible for their acts. Under this system twenty vessels were built, all of which (they were exact duplicates) proved absolute failures, their only value being their worth as old material. The cost to the Government was about $8,000,000, and there was, in my opinion, a considerable loss borne by the contractors chargeable to the action of the Government and not yet compensated.

The contracts were taken at a round sum for a certain amount of work to be done in a certain time conformably to drawings and specifications to be furnished by Mr. Stimers. The responsibilities of the contractors were limited to the quality of the

materials and workmanship, and to the completion of the vessels in the specified time. They were not at all concerned in the final success or failure of the vessels.

From the first the plans were continually changed and important modifications introduced, all in the direction of more expensive work and materials, and requiring longer time for execution. This increased length of time involved greatly increased cost of the work of the contractors, owing the daily and rapidly increasing rise, at that date, in the cost of materials and labor. The war was then at its height, and the Government was in the market for the whole mechanical resources of the country, which were not able to meet the demand upon them, and, as a result, the price of certain materials and labor used in the construction of ships and machinery rose abnormally high above even the general increase of price. The loss due to this cause was of necessity borne by the contractors, and has never in any of the settlements made been taken into consideration. Had the plans and specifications been delivered to the contractors at the date of the contract, so that they could have then made their purchases of materials, and had there been no changes in these plans and specifications, so that the work could have been prosecuted uninterruptedly to completion without the great delays unavoidable to such changes and alterations, it could have been executed in the contract time, and the contractors would have saved to themselves the rise in the price of materials and labor which took place during the extended time.

There must be here recalled that for the great extension of time in the completion of these contracts the Government alone was responsible by the changes, alterations, and additions it made to the work after the contracts were executed. This extension of time reacted upon the cost of the work as a whole, and though the Government paid a certain sum for additional work, that sum was inadequate to cover the losses of the contractors by the rise in the cost of materials and labor used in the construction of the work done according to the original contract, and which was prolonged in consequence of the alterations and additions.

All that the Government paid for was the price of additional work at current rates, but the work as a whole could only progress together; that which was in accordance with the original contract had to wait until the additions and alterations could be completed, and in the meantime the cost of materials and labor was rising rapidly and enormously. These delays, which no efforts of the contractors could prevent and which were caused exclusively by the action of the Government, were ruinous to the contractors by reason of the continual rise of prices; materials and labor became every day scarcer and scarcer; the shops and plant of the contractors were occupied by the vessels that they could neither abandon nor complete. They could not therefore take other and remunerative work, and they had to keep a full force of workmen, for if they once lost them they could not, at that time, be recovered, so great was the demand.

Some approximation may be furnished of the losses sustained by the contractors from the action of the Government in departing from the original plans and specifications by additions and alterations involving great increase of time, by estimating the cost to the contractors of the original work had it been done in contract time, which would have been the case but for the interference of the Government, and the cost of the same work done in the extended time caused by the action of the Government taking as the basis the average price of materials and labor in the two cases.

The additions and alterations referred to were due to the incapacity of Mr. Stimers to properly design such vessels. Without knowledge of how to proceed, he was constantly vacillating, doing and undoing; completed work was destroyed and other work substituted; time was lost between the notification to the contractors that other plans would be prepared in place of those already furnished and the reception of such plans. In fact, the character of the vessels was essentially changed during their construction from the original programme; great delays were consequently necessarily experienced, and as the price of materials and labor was continually increasing, due to the continually increasing demand for the same caused by the war, the cost of executing the work which was done according to the original contract was much increased at the expense of the contractors.

Respectfully,

B. F. ISHERWOOD.

Hon. BENJAMIN BUTTERWORTH.

I certify the above is a true copy.
[SEAL.]

WM. H. DAVIS,
Notary Public for New Jersey.

That Congress has in the past comprehended the injustice of permitting these contractors and others similarly situated to bear the immense losses they suffered under the circumstances stated has been

made apparent in various proceedings had at different times since the close of the war, sometimes by one House acting separately and independently, sometimes by the joint action of both Houses—notably in the former case the action of the Senate of March 9, 1865, which led to the organization of the Selfridge board, and of the latter by the act of March 2, 1867, which resulted in the organization and report of the Marchand board, to say nothing of the various special acts of Congress and numerous reports submitted from the committees of the respective Houses from time to time. Among the latter reference might be properly made to the following: Report of Senator Nye, Senate Report No. 45, second session Twenty-ninth Congress; Senate Report No. 37, second session Forty-second Congress; Representative Stone's report, No. 17, second session Thirty-ninth Congress.

A bill to pay these claimants directly the amount of their claims, as reported by the Selfridge board, passed the House of Representatives unanimously in the third session of the Forty-seventh Congress. Various special acts have been passed covering similar cases, some of them included in the report of the Selfridge board, to wit:

One of the awards has been paid by joint resolution of March 30, 1867 (15 Stat. L., 353), by which Donahue, Ryan & Secor were paid $179,000 for losses sustained by them in constructing the *Comanche*. Amount allowed by the board, $179,993.80.

In addition the following special acts have been passed to relieve contractors in similar cases, to wit:

Act of February 18, 1873, to relieve the heirs of George C. Bestor, $125,000. (17 Stat. L., 733.)

Act of June 1, 1872, to pay Charles W. Whitney $50,000. (17 Stat. L., 671.)

Act of June 10, 1872, to pay J. S. Underhill $23,310.75. (17 Stat. L., 691.)

Act of March 2, 1875, to pay Daniel S. Mershon, jr., $46,715.08. (18 Stat. L., 635.)

The contractors for building the Dome of the Capitol were awarded and paid $96,000 for increase in the price of labor and material during its construction. The Government prolonged the time of its completion. (See Senate Report No. 132, first session Thirty-ninth Congress.)

John Ericsson was paid $1,070,438.93 on the *Puritan* (U. S. Stat. L., June 25, 1864, vol. 13, 409) for increased cost of labor and materials.

Miles Greenwood, of Cincinnati, Ohio, was paid $76,000 for increased cost of labor and material in building the United States vessel *Tippecanoe*, in 1873.

NOTE.—In the Forty-first Congress, second session, a joint resolution was passed by Congress, referring claims of certain naval contractors to the Court of Claims, and was vetoed by the President on the ground that it was a departure from the basis fixed by the act of March 2, 1867.

The Fifty-first Congress referred a number of these claims to the Court of Claims for adjudication, among the number the claims of the executors of Donald McKay, deceased, and Snowdon & Mason. The court awarded McKay $115,157; and to John N. Snowdon, surviving partner as the firm of Snowdon & Mason, $118,327.26; to Edward P. Bliss, executor of Donald McKay, deceased, $101,529.73, and S. E. E. Perine, administratrix of William Perine, deceased, $127,077.

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